COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

March 1, 2019

To: **Subcommittee on Health Members and Staff**

Fr: **Committee on Energy and Commerce Staff**

Re: **Hearing on "Strengthening Our Health Care System: Legislation to Lower Consumer Costs and Expand Access"**

On **Wednesday, March 6, 2019, at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the subcommittee will hold a legislative hearing entitled, "Strengthening Our Health Care System: Legislation to Lower Consumer Costs and Expand Access."

I. H.R. 1425, STATE HEALTH CARE PREMIUM REDUCTION ACT

A. Background

To help Americans afford their health insurance premiums, the Affordable Care Act (ACA) provides tax subsidies to individuals and families who earn up to 400 percent of the federal poverty level (FPL) on a sliding scale based on income. The law also established a transitional reinsurance program that provided payments to individual market health plans for high-cost enrollees with significant medical needs. The reinsurance program, which sunset in 2016, helped reduce premiums for all enrollees.

The Trump Administration has issued several regulations and implemented policy changes that have increased premiums.[1] A study by the Kaiser Family Foundation estimates that 2019 premiums are 16 percent higher than they otherwise would be due to the Administration's actions to eliminate the law's cost-sharing subsidies, expand the availability of short-term limited duration insurance (STLDI), and repeal the individual mandate.[2] The Congressional Budget

---

[1] The Brookings Institution, *How Would Individual Market Premiums Change in 2019 in a Stable Policy Environment?* (Aug. 2018) (www.brookings.edu/wp-content/uploads/2018/08/Individual-Market-Premium-Outlook-20191.pdf).

[2] Henry J Kaiser Family Foundation, *How Repeal of the Individual Mandate and Expansion of Loosely Regulated Plans are Affecting 2019 Premiums* (Oct. 26, 2018) (www.kff.org/health-reform/issue-brief/how-repeal-of-the-individual-mandate-and-expansion-of-loosely-regulated-plans-are-affecting-2019-premiums/?utm_campaign=KFF-2018-October-Health-Costs-ACA-Premiums-Marketplaces).

Office estimates that the STLDI regulation alone will cause premiums to increase by three percent.[3]

The Administration's regulatory changes have increased costs for individuals who are not eligible for the ACA's tax subsidies and has caused a significant decrease in enrollment among this population.[4] Premiums in the individual market increased roughly 17 percent in 2018 versus 2017, largely due to the Administration's decision to terminate cost-sharing payments. In addition, unsubsidized enrollment outside the marketplaces decreased by 2.3 million.[5] The Administration has acknowledged that most of the enrollment decreases occurred among individuals who are ineligible for subsidies.[6]

B. Legislation

H.R. 1425, which was introduced by Representatives Angie Craig (D-MN) and Scott Peters (D-CA), would provide $10 billion annually to states, with the option for states to establish a state reinsurance program or use the funds to provide financial assistance to reduce out-of-pocket costs for individuals enrolled in qualified health plans. The bill further requires the Centers for Medicare and Medicaid Services (CMS) to establish and implement a reinsurance program in states that do not apply for federal funding. The bill sets a state's allocation amount based on the state's share of claims of high-cost enrollees.

II. H.R. 1386, THE "EXPAND NAVIGATORS' RESOURCES FOR OUTREACH, LEARNING, AND LONGEVITY ACT OF 2019" or THE "ENROLL ACT OF 2019"

A. Background

The ACA required exchanges to establish a Navigator program and award grants to Navigator entities. The law tasked Navigators with several marketplace enrollment responsibilities, including conducting public education activities to raise awareness of coverage availability on the marketplaces, and providing fair and impartial information on enrollment and financial assistance.

---

[3] Congressional Budget Office, *How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans* (Jan. 2019) (www.cbo.gov/system/files?file=2019-01/54915-New_Rules_for_AHPs_STPs.pdf).

[4] Centers for Medicare & Medicaid Services, *Trends in Subsidized and Unsubsidized Individual Health Insurance Market Enrollment* (July 2, 2018) (www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2018-07-02-Trends-Report-2.pdf).

[5] Kaiser Family Foundation, *Data Note: Changes in Enrollment in the Individual Health Insurance Market* (July 31, 2018) (www.kff.org/health-reform/issue-brief/data-note-changes-in-enrollment-in-the-individual-health-insurance-market).

[6] *See* note 4.

On August 31, 2017, the Trump Administration reduced funding for the Navigator program from $63 million to $36.8 million, a 40 percent cut from the previous year.[7] The Administration further reduced funding for 2019 to $10 million.[8] The Administration set the funding allocation based on a narrower goal of marketplace enrollment but did not specify which measures would be used to evaluate Navigator performance. The Administration also stipulated that funding applications will be evaluated based on a Navigator's ability to establish relationships with individuals who "may be unaware of the range of available options in addition to qualified health plans, such as association health plans [and] STLDI."[9]

B. <u>Legislation</u>

H.R. 1386, which was introduced by Representative Kathy Castor (D-FL), would fund the Navigator program for the federally-facilitated Marketplace (FFM) at $100 million per year. The bill would require the Department of Health and Human Services (HHS) to ensure that Navigator grants are awarded to organizations with a demonstrated capacity to carry out the duties specified in the ACA and would reinstate the requirement that there be at least two Navigator entities in each state. The legislation would further give Navigators new duties pertaining to enrolling individuals in Medicaid and the Children's Health Insurance Program, and it would allow Navigators to provide their services year-round. Lastly, the bill would prohibit HHS from taking into account an entity's capacity to provide information relating to association health plans or STLDI in awarding grants.

III. H.R. 1385, THE "STATE ALLOWANCE FOR A VARIETY OF EXCHANGES ACT" or THE "SAVE ACT"

The ACA provided states the option to establish their own marketplaces or rely on the FFM. The law also provided grants to states to support the planning and establishment of state-based marketplaces. However, these grants could be awarded only up until January 1, 2015. Accordingly, states no longer have access to this funding to establish a state-based marketplace.

States that operate their own marketplaces have greater flexibility and control over their insurance markets. State-based marketplaces can tailor consumer outreach and financial assistance to meet the needs of their population. Massachusetts established a program that provides supplemental subsidies for individuals up to 300 percent of the FPL, and is coupled

---

[7] Centers for Medicare & Medicaid Services, *Policies Related to the Navigator Program and Enrollment Education for the Upcoming Enrollment Period* (Aug. 31, 2017) (https://www.cms.gov/cciio/programs-and-initiatives/health-insurance-marketplaces/downloads/policies-related-navigator-program-enrollment-education-8-31-2017pdf.pdf).

[8] Centers for Medicare & Medicaid Services, *Cooperative Agreement to Support Navigators in Federally-Facilitated Exchanges* (July 10, 2018) (https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2018-Navigator-FOA-FAQs.pdf).

[9] *Id.*

with the ACA subsidies.[10] For 2017 and 2018 plan years, the Massachusetts Health Connector had the lowest average premiums of any marketplace.[11] Enrollment in state-based marketplaces has remained stable and premiums are lower overall, compared to the FFM.[12] Moreover, state-based marketplaces that opted for longer open enrollment periods beyond the FFM's shortened six-week period experienced higher enrollment gains in 2018.[13]

H.R. 1385, which was introduced by Representatives Andy Kim (D-NJ) and Brian Fitzpatrick (R-PA) on February 28, 2019, would provide states with $200 million in federal funds to establish state-based marketplaces.

IV. WITNESSES

Peter Lee
Executive Director
Covered California

Audrey Morse Gasteier
Chief of Policy
Massachusetts Health Connector

J.P. Wieske
Vice President, State Affairs
Council for Affordable Health Coverage

---

[10] Health Affairs, *Why Massachusetts Stands Out In Marketplace Premium Affordability* (Sept 4, 2018) (https://www.healthaffairs.org/do/10.1377/hblog20180903.191590/full/#one).

[11] *Id.*

[12] The Commonwealth Fund, *Health Insurance Markets Perform Better in States That Run Their Own Marketplaces* (Mar 7, 2018) (https://www.commonwealthfund.org/blog/2018/health-insurance-markets-perform-better-states-run-their-own-marketplaces).

[13] Urban Institute, *What Explains 2018's Marketplace Enrollment Rates?* (June 2018) (https://www.urban.org/sites/default/files/publication/98650/marketplace2018_2001877.pdf).